

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

January 19, 2012 Hearing

Agenda Item 3

SUBJECT: Flyn' Fish Oyster Bar & Grill - (PA2011-199)
2304 W. Ocean Front
▪ Conditional Use Permit No. UP2011-034

APPLICANT: Stephen Loomis

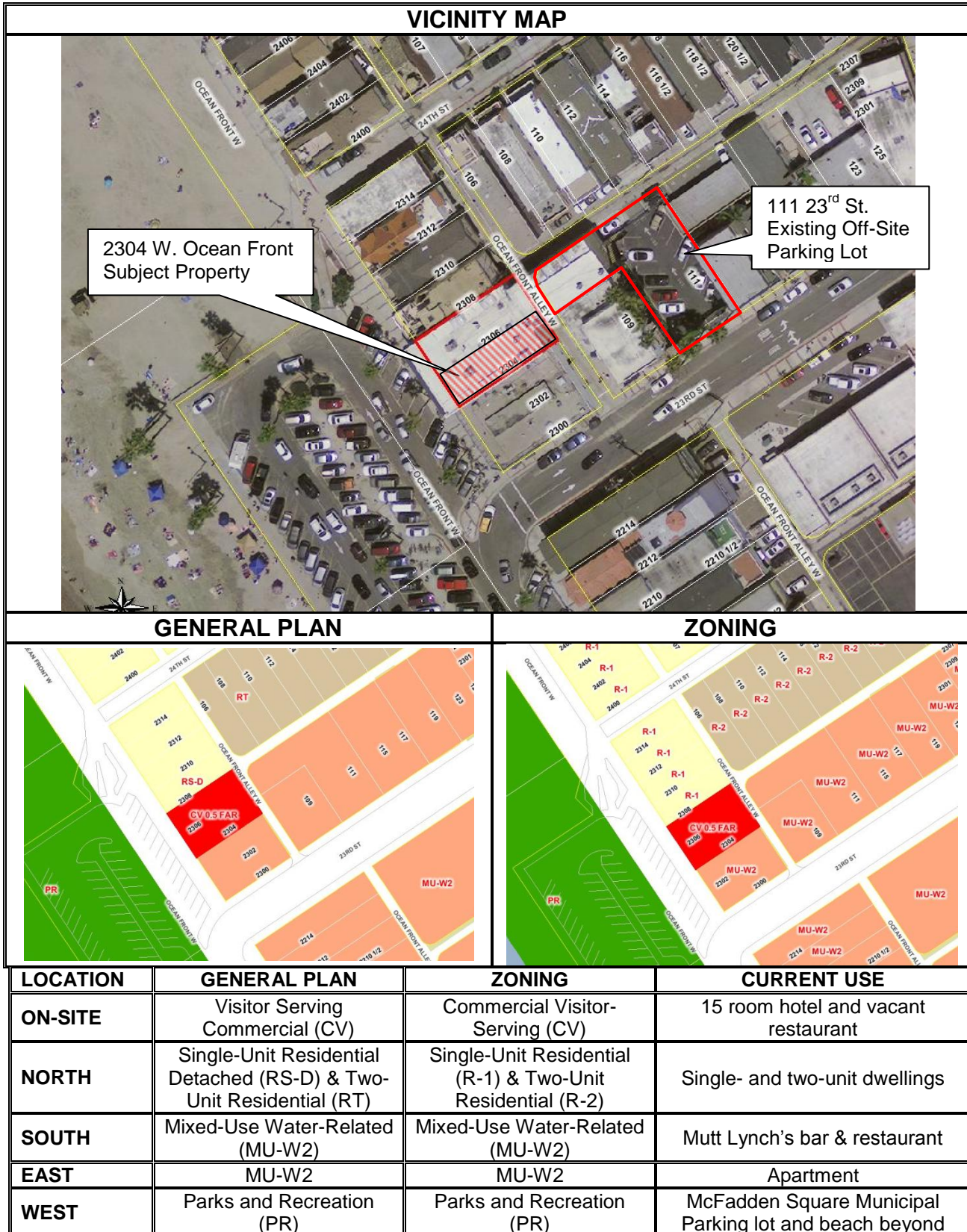
PLANNER: Jaime Murillo, Associate Planner
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PROJECT SUMMARY

A request for a conditional use permit to change the seating configuration of an existing eating and drinking establishment (restaurant) previously authorized under Use Permit No. UP3200. The applicant is also requesting to expand the hours of operation to allow for breakfast service beginning at 9:00 a.m. on weekends. The existing hours of operation are from 11:00 a.m. to 12:00 midnight, daily. No other changes to the establishment are proposed. If approved, the new conditional use permit will supersede the existing use permit and an Operator License will be required.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ approving Conditional Use Permit No. UP2011-034 (Attachment No. PC1).



INTRODUCTION

Project Setting

The restaurant is located at 2304/2306 West Ocean Front and utilizes parking on property located at 111 23rd Street. The 2304/2306 West Ocean Front property is developed with a two-story building containing the subject restaurant and a hotel lobby on the ground floor and 12 hotel rooms on the second floor. The restaurant is an independent use separate from the hotel use. The 111 23rd Street property is located across the alley to the rear and is developed with a small parking lot containing 14 parking spaces used by the hotel and the restaurant. The 23rd Street parcel also includes a small two-story structure that is connected to the hotel by a pedestrian bridge over the public alley. This structure includes a two-car garage and storage for the hotel on the ground level and three hotel rooms on the second floor. Site photographs are included as Attachment No. PC3.

The restaurant suite consists of 1,672 square feet of gross floor area, of which 580 square feet is Net Public Area (NPA)¹. The remaining floor area is used for kitchen, food preparation, food storage, and restrooms. The existing furniture layout consists entirely of sit-down dining with a total of 14 tables and seating for 50 people.

Surrounding uses include residential dwelling units to the north and northwest, the McFadden Square Municipal Parking Lot and the ocean beyond to the west, commercial uses to the south, and a three-unit residential apartment to the east.

Project Description

The applicant is proposing to renovate the interior of the existing vacant restaurant by expanding the kitchen, constructing an oyster bar, and remodeling the dining area. Although the floor plan will be reconfigured to accommodate the larger kitchen and oyster bar, the Net Public Area of the restaurant will remain at approximately 580 square feet (Attachment No. PC4- Project Plans). The oyster bar will also be used to serve alcoholic beverages and will accommodate 10 bar seats. The total seating count will remain at 50 seats. The applicant maintains a Type 47 (On-Sale General for Bona Fide Public Eating Place) Alcoholic Beverage License that authorizes the sale of beer, wine, and distilled spirits for consumption on the premises.

In addition to the renovation, the applicant is proposing to expand the hours of operation to accommodate breakfast service. The existing hours of operation are between 11:00 a.m. to 12:00 midnight, daily. The applicant is requesting the ability to open at 9:00 a.m.

¹ **Area, Net Public.** The total area used to serve customers, including customer sales and display areas, customer seating areas, service counters, and service queue and waiting areas, but excluding restrooms and offices, kitchens, storage and utility areas, and similar areas used by the employees of the establishment. (NBMC Sec.20.70.020)

on Saturdays and Sundays. Staff is recommending extending the hours to 7:00 a.m. daily to allow for flexibility in the future.

The restaurant will also offer catering and room service to the adjacent hotel. No other changes to the operation of the restaurant are proposed. Live entertainment or dancing is not requested. The applicant is requesting to reinstitute the use of valet parking within the public right-of-way for restaurant patrons, as previously approved under Use Permit No. 3200 (see *Valet Parking* section of this report for details).

Background

Hotel Background

The City has no records of when the hotel was established; however, the County Assessor's records indicate the building was constructed in 1906. In 1986, Use Permit No. UP3195 was approved allowing the conversion of a portion of the ground floor area of the existing building into a new hotel lobby and reception area and permitted the service of continental breakfasts and alcoholic beverages to hotel guests. In 1989, UP3195 was amended allowing the further expansion of the hotel lobby, including the addition of office and storage areas. Also in 1989, subsequent to the amendment, the hotel acquired and developed their parking lot at 111 23rd Street, which until then had no parking.

Restaurant Background

On June 5, 1986, Use Permit No. UP3200 was approved authorizing the conversion of two take-out restaurants into one restaurant with on-sale alcoholic beverage service (Attachment No. PC5). The restaurant was approved with a net public area of 703 square feet, granted a credit of seven parking spaces with the remaining 11 required parking spaces to be provided within an off-site parking lot located at 111-115 22nd Street.

In 1990, the restaurant was closed and the off-site parking agreement was allowed to expire. Due to the inability to accommodate parking on-site and to allow a new operator to reopen the facility, UP3200 was amended on December 6, 1990, reducing the Net Public Area from 703 square feet to 580 square feet, waiving 12 of the required 15 parking spaces², authorizing the remaining three required parking spaces to be provided off-site within the hotel's new parking lot located at 111 23rd Street, and establishing valet parking service (Attachment No. PC6). Three parking spaces were dedicated within the parking lot for the exclusive use of the restaurant; however, additional parking will be made available within the lot for the restaurant to utilize should low demand for hotel parking spaces occur. In order to ensure permanent availability of

² UP3200 (amended) established a parking ratio of 1 space per 40 square feet of NPA. Based on the NPA of 580 square feet, a total of 15 parking spaces would have been required.

the lot for restaurant parking, a covenant was recorded guaranteeing that the off-site parking lot parcel will remain in the same ownership as the restaurant/hotel parcel (Attachment No. PC7).

DISCUSSION

Analysis

Valet Parking

Use Permit No. 3200 authorized the use of valet parking service in conjunction with the restaurant operation. The valet station was required to be located within the off-site parking lot (111 23rd St.) unless the City Council approved a valet station on the public right-of-way. On January 14, 1991, the City Council allowed a 90-day trial period for valet parking subject to a number of conditions (Attachment No. PC8) including entering into an agreement with the City and paying an annual fee. The approval allowed the restaurant to non-exclusively utilize three unmetered loading spaces located directly in front of the restaurant for valet purposes. The approval also restricted the valet operation to only park customer's vehicles in their off-site lot and prohibited the parking of vehicles within the public street or parking lot. During the trial period, Police and Traffic Engineering did not witness any congestion or other issues with the valet operation. At the conclusion of the trial period, the City's Traffic Affairs Committee voted to permanently approve (Attachment No. PC9) the continued use of valet service until such time as a public safety issue arises. The Committee determined that the benefits to the public of using on-street parking for valet service at this location reduced congestion created by restaurant patrons looking for parking and ensured greater usage of the off-site parking spaces.

The original annual fee for the use of all three spaces assessed in 1991 was \$300, adjusted annually in accordance with the Consumer Price Index (CPI). Based on the CPI adjustments, the annual fee now equates to \$495. In addition to the annual fee and all conditions from the 1991 approval, staff is also recommending a new condition stating that should valet parking demands exceed the availability within the off-site lot, the operator must temporarily suspend valet parking of arriving customers' vehicles until such time parking is available within the lot (Condition No. 31).

Late-Hour Operations

Although the restaurant will continue to maintain the existing closing time of 12:00 midnight, pursuant to Section 20.48.090 of the Zoning Code, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses when reviewing an application to allow late-hour operations³:

³ **Late Hour Operations.** Facilities that provide service after 11:00 p.m. any day of the week. (NBMC Sec.20.70.020)

1. *Noise from music, dancing, and voices associated with allowed outdoor uses and activities;*
2. *High levels of lighting and illumination;*
3. *Increased pedestrian and vehicular traffic activity during late and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

The nearest residential uses are located immediately adjacent to the hotel building to the west. Hotel guests are also considered sensitive users since rooms are located above the restaurant. The restaurant will maintain the existing closing time of 12:00 midnight and no outdoor dining, dancing, or live entertainment is proposed. To help ensure compatibility and minimize sound emanating from the property, a condition of approval has also been included requiring the exterior windows and doors of the facility to remain closed at 10:00 p.m. No new lighting is proposed.

The restaurant fronts onto the West Ocean Front boardwalk and public parking lot that already experiences heavy pedestrian and vehicular activity throughout the day. The proposed floor plan changes and increased hours of operation for breakfast service will not result in increased late-hour pedestrian and vehicular activity. A maximum of 50 seats will remain and the allowed occupancy of the restaurant will not increase with this approval.

Existing trash storage for the restaurant is provided within the hotel's garage and storage area on the 111 23rd Street parcel. The requested changes to the restaurant operation are not expected to result in an increase in trash collection activities. A condition of approval has been included requiring the trash to be kept within the garage at all times, except during collection.

Should the Planning Commission approve this amendment, the applicant will be required to obtain an Operator License from the Police Department. The Operator License will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations.

Conditional Use Permit Findings

The requested change in hours of operation and the addition of a bar is considered a substantial change in operation that requires an amendment to the existing conditional use

permit. Pursuant to Section 20.52.020.F of the Zoning Code, the Planning Commission must make the following findings in order to approve a conditional use permit:

- 1. The use is consistent with the General Plan and any applicable Specific Plan;*
- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*
- 3. The design, location, size, operating characteristics of the use are compatible with the allowed uses in the vicinity;*
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
- 5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Staff believes sufficient facts exist in support of each finding. The restaurant operation is defined as a Food Service, Late Hours use, with alcoholic beverages, and is consistent with the purpose and intent of the Visitor-Serving Commercial (CV) land use designation of the General Plan and Commercial Visitor-Serving (CV) Zoning District. The CN designation and district are intended to provide for areas appropriate for accommodations, goods, and services intended to serve primarily visitors to the City. Food Service uses can be expected to be found in this area and similar locations and are complementary to the surrounding commercial and residential uses.

As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking establishments and solid waste storage. The proposed renovations to the existing vacant restaurant facility will potentially have a positive impact on the overall economic health of the community and may promote further revitalization of the other commercial properties located along the boardwalk and within the McFadden Square area.

A minimum of three parking spaces are provided within the off-site parking lot for the restaurant and additional spaces will be made available if the remaining spaces are not being utilized by the hotel. Public parking also exists in the adjacent public parking lot. Given its location fronting the boardwalk and public parking lot, the restaurant is expected to generate a significant amount of walk-in trade from residents and visitors in the area. Therefore, staff believes adequate parking will be provided for the proposed operation at all times of the day.

The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain an

environment compatible for both residents and businesses. The Police Department has submitted a memorandum indicating that they do not object to the proposed operation or floor plans (Attachment No. PC10). To ensure that the floor plan changes and addition of a bar do not create a detrimental impact during late hours, the operator will be required to secure an Operator License and will be required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance to areas surrounding the establishment and adjacent properties during business hours.

Alternatives

1. The Planning Commission may suggest specific project modifications or operational changes that are necessary to alleviate concerns. If the changes are substantial, the item should be continued to a future meeting to allow redesign of the project.
2. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission should deny the application requests. In which case, UP3200 will remain in effect unless action is taken to revoke this permit.

Environmental Review

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities). This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves minor alterations to the interior floor plan of an existing restaurant, and therefore, qualifies for this exemption.

Public Notice

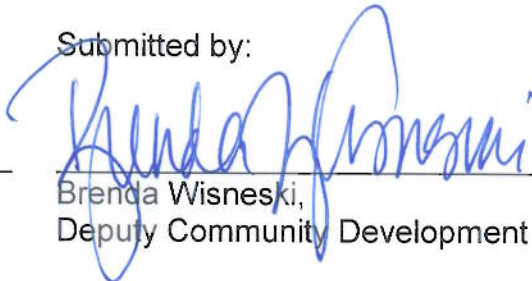
Notice of this hearing was published in the Daily Pilot, mailed to all property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Jaime Murillo, Associate Planner

Submitted by:



Brenda Wisneski,
Deputy Community Development Director

ATTACHMENTS

- PC 1 Draft Resolution for Approval with Findings and Conditions
- PC 2 Draft Resolution for Denial
- PC 3 Site Photographs
- PC 4 Project Plans
- PC 5 Planning Commission Approval and Minutes of UP3200
- PC 6 Planning Commission Approval and Minutes of UP3200 (amended)
- PC 7 Off-Site Parking Covenant
- PC 8 January 14, 1991 City Council Valet Approval
- PC 9 Traffic Affairs Committee Approval
- PC 10 Police Department Memorandum

Tmplt: 06/22/11

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Attachment No. PC 1

Draft Resolution for Approval

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-034 (AMENDMENT TO UP3200) FOR A FOOD SERVICE, LATE-HOURS USE LOCATED AT 2304 WEST OCEAN FRONT (PA2011-199)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Stephen Loomis, with respect to property located at 2304 West Ocean Front, and legally described as Parcel 1 of Parcel Map No. 86-196, as per map recorded in Book 244, Pages 33 through 34 of Parcel Maps, requesting an amendment to an existing conditional use permit (UP3200).
2. The applicant proposes to change the seating configuration of an existing eating and drinking establishment with an addition of a bar and to expand the hours of operation to allow for breakfast service on weekend mornings. The proposed hours of operation are from 11:00 a.m. to 12:00 midnight on weekdays and from 9:00 a.m. to 12:00 midnight on weekends. No other changes to the establishment are proposed.
3. The subject property is located within the Commercial Visitor-Serving (CV) Zoning District and the General Plan Land Use Element category is Visitor-Serving Commercial (CV).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor-Serving Commercial (CV-B).
5. A public hearing was held on January 19, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves minor alterations to the interior floor plan of an existing restaurant, and therefore, qualifies for this exemption.

SECTION 3. REQUIRED FINDINGS.

Pursuant to Section 20.20.020 of the Zoning Code, eating and drinking establishments classified as *Food Service, Late Hours*, require the approval of a conditional use permit within the Commercial Visitor-Serving Zoning District. The existing establishment operates pursuant to Use Permit No. UP3200 (as amended December 6, 1990). The requested change in hours of operation and the addition of a bar is considered a substantial change in operation that requires an amendment to UP3200. In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable Specific Plan.

Facts in Support of Finding:

- A-1. The operation of a Food Service, Late Hours use, with alcoholic beverages, is consistent with the purpose and intent of the Visitor-Serving Commercial (CV) land use designation of the General Plan.
- A-2. The CV designation is intended to provide for areas appropriate for accommodations, goods, and services intended to serve primarily visitors to the City. Food Service uses can be expected to be found in this area and similar locations and are complementary to the surrounding commercial and residential uses.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

- B-1. Eating and drinking establishments classified as *Food Service, Late-Hours* require the approval of a conditional use permit within the Commercial Visitor-Serving (CV) district.
- B-2. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking establishments.
- B-3. Pursuant to Chapter 5.25, an amendment to a use permit requires the operator of the establishment to secure an Operator License from the Police Department to maintain operating hours beyond 11:00 p.m. This requirement is included in the conditions of approval.

Finding:

C. The design, location, size, operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

- C-1. The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain an environment compatible for both residents and businesses.
- C-2. A minimum of three parking spaces are provided for the restaurant's use at the off-site parking lot located across the alley from the property and located at 111 23rd Street. Additional spaces may be made available for the restaurant's use if the remaining spaces within the lot are not being utilized by the hotel. Public parking also exists in the adjacent public parking lot. Given its location fronting the boardwalk and public parking lot, the restaurant is expected to generate a significant amount of walk-in traffic from residents and visitors in the area. Therefore, adequate parking will be provided for the proposed operation at all times of the day.
- C-3. The use of the passenger loading spaces for valet service at this location will reduce any congestion created by restaurant patrons looking for parking and will ensure greater usage of the off-site parking facility.
- C-4. The restaurant will maintain the existing closing time of 12:00 midnight and is not anticipated to create disturbances to the adjacent uses because there will be no outdoor dining, dancing, or live entertainment. A condition of approval has also been included requiring the exterior windows and doors of the facility to remain closed after 10:00 p.m., which will minimize sound emanating from the property.
- C-5. No new lighting is proposed with the exception of illumination.
- C-6. Existing trash storage for the restaurant is provided within the hotel's garage and storage area on the 111 23rd Street parcel. The requested changes to the restaurant operation are not expected to result in an increase in trash collection activities. A condition of approval has been included requiring the trash to be kept within the garage at all times, except during collection.
- C-7. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.
- C-8. The site is located near the northwest corner of 23rd Street and West Ocean Front, with the building fronting onto the boardwalk and the public parking lot for

the area. This is an appropriate location for a restaurant and is compatible with other commercial uses in the area. The restaurant also serves as an important visitor-serving use that benefits the area.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

- D-1. Adequate public and emergency vehicle access, public services, and utilities exist for the site.
- D-2. The design of the tenant improvements proposed will comply with all Building, Public Works, and Fire Codes, and will be approved by the Orange County Health Department.
- D-3. The site fronts onto the West Ocean Front boardwalk and public parking lot that already experiences heavy pedestrian and vehicular activity throughout the day. The proposed floor plan changes and increased hours of operation for breakfast service will not result in increased late-hour pedestrian and vehicular activity since a total of 50 seats will remain and the occupancy of the restaurant will not increase.
- D-4. The location of the off-site parking lot is in close proximity and has proven to be useful to the restaurant and does not create a traffic hazard in the surrounding area. A covenant has been recorded guaranteeing that the parcel used for off-site parking for the restaurant will remain in the same ownership as the property on which the restaurant is located.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

- E-1. The proposed renovations to the existing restaurant facility will have a positive impact on the overall economic health of the community, and may promote further revitalization of the other commercial properties located along the boardwalk and within the McFadden Square area.

- E-2. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots of the shopping center, during business hours, if directly related to the patrons of the establishment surrounding residents.
- E-3. In order to maintain late hours, the applicant will be required to obtain an Operator License from the Police Department. The Operator License will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with means to modify, suspend, or revoke the operator's ability to maintain of late-hour operations if objectionable conditions occur.
- E-4. The use authorized by this permit is not a bar, tavern, cocktail lounge, nightclub or an establishment where live entertainment, recreational entertainment or dancing is permitted. Prohibition of these uses or activities are likely to minimize potential land use conflicts, nuisances and police intervention.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit No. UP2011-034, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. Conditional Use Permit No. UP2011-034 shall be considered an amendment to Use Permit No. UP3200, and upon vesting of the rights authorized by this conditional use permit, the conditions of approval of UP3200 shall be superseded by the conditions of approval included in this resolution.

PASSED, APPROVED AND ADOPTED THIS 19TH DAY OF JANUARY, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY:_____
Michael Toerge, Chairman

BY:_____
Fred Ameri, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

1. *The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)*
2. *Conditional Use Permit No. UP2011-034 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
3. *Conditional Use Permit No. UP2011-034 shall be considered an amendment to Use Permit No. UP3200, and upon vesting of the rights authorized by this conditional use permit, the conditions of approval of UP3200 (amended) shall be superseded by the conditions of approval included in this resolution.*
4. The approval is only for an eating and drinking establishment defined as Food Service, Late Hours as defined by Title 20 of the Municipal Code, and does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub.
5. *The hours of operation shall be limited to between 7:00 a.m. and 11:00 p.m., daily, unless the operator of the establishment secures and maintains an Operator License pursuant to Chapter 5.25 of the Municipal Code to operate with late hours. In no case shall the establishment be permitted to operate beyond the hours of 12:00 midnight.*
6. *The Operator License required to be obtained pursuant to Condition No. 5 and Chapter 5.25 of the Municipal Code, may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.*
7. *Full meal service shall be provided during all hours of operation, except 30 minutes before the scheduled closing time.*
8. *The interior Net Public Area of the establishment, as defined by NBMC Section 20.70.020, shall be limited to a maximum of 580 square feet.*
9. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
10. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.

11. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
12. This Conditional Use Permit may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
13. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.
14. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
15. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
16. No outside paging system shall be utilized in conjunction with this establishment.
17. *All trash shall be stored within the building or within the hotel garage and storage area located at 111 23rd Street, except when placed for pick-up by refuse collection agencies. Any changes in trash collection and storage shall be reviewed and approved by the Community Development Director.*
18. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
19. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this Conditional Use Permit.
20. Prior to final of the building permits, the applicant shall prepare and submit a practical program for controlling litter, spills, and stains resulting from the use on the site and adjacent areas to the Planning Division for review. The building permit shall not be finalized and use cannot be implemented until that program is approved. The program shall include a detailed time frame for the policing and cleanup of the public sidewalk and right-of-way in front of the subject property as well as the adjacent public right-of-way (25 feet north and south of the subject property) not just in front of the subject

tenant space. Failure to comply with that program shall be considered a violation of the use permit and shall be subject to administrative remedy in accordance with Chapter 1.05 of the Newport Beach Municipal Code that includes issuance of a citation of violation and monetary fines.

21. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Division and Public Works Department in conjunction with the approval of an alternate drainage plan.
22. The rear doors of the facility shall remain closed at all times. The use of the rear door shall be limited to deliveries and employee use only. Ingress and egress by patrons is prohibited in unless there is an emergency.
23. *The exterior windows and doors of the facility shall remain closed after 10:00 p.m., daily, except for the ingress and egress of patrons and employees.*
24. *That all but three of the required 15 parking spaces for the restaurant are waived (1991 Condition).*
25. *The existing covenant shall be maintained guaranteeing that the parcel used for off-site parking for the restaurant remains in the same ownership as the property on the which the restaurant is located (1991 Condition; modified).*
26. *A minimum of three parking spaces shall be provided on the adjoining off-site parking lot for the exclusive use of the restaurant*
27. *The restaurant shall be permitted to operate a full time valet parking service in conjunction with the restaurant operation. However, the valet station shall be located in the off-site parking lot unless the operator enters into an agreement with the City authorizing a valet station within the public right-of-way (1991 Condition; modified).*
28. *The applicant shall enter into an agreement with the City providing indemnification, naming the City as additional insured on a liability policy providing a minimum of \$1,000,000 coverage and stipulating that the City can revoke this approval in the event of a violation of Conditions of Approval (1991 Valet Condition).*
29. *The restaurant shall pay to the City of Newport Beach an annual fee of \$495 for the portion of calendar year 2012. The fee shall be adjusted annually in accordance with the Consumer Price Index for Los Angeles-Long Beach-Anaheim, with payments due January 1st of each succeeding year (1991 Valet Condition; modified).*
30. *The pick-up and delivery of automobiles in conjunction with the restaurant valet service shall be conducted in full conformance with the California Vehicle Code and applicable portions of the Municipal Code (1991 Valet Condition).*

31. *The valet service shall only park customer's vehicles in their off-site facility. Should valet parking demands exceed the number of spaces available with the off-site lot, the operator must temporarily suspend valet parking of arriving customers' vehicles until such time parking is available within the off-site lot (1991 Valet Condition; modified).*
32. *The valet service shall utilize sufficient employees to prevent the capacity of the loading area from being exceeded and to prevent queuing of vehicles in the drive aisle. Double parking shall not be allowed at any time (1991 Valet Condition; modified).*
33. *Any signs for valet service shall be subject to further review and approval of the Traffic Engineer and the Community Development Director. An Encroachment Permit shall be obtained for all signs placed in the public right-of-way (1991 Valet Condition).*
34. *The passenger loading spaces shall be available for all legal use and are not for the exclusive use of the restaurant or any other business (1991 Valet Condition).*
35. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
36. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application and may require the approval of the Planning Commission.
37. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
38. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
39. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
40. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that

reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Planning Division on demand.

41. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited
42. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
43. There shall be no on-site radio, televisions, video, film or electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
44. Live entertainment and dancing shall be prohibited as a part of the regular operation, unless an amendment to this conditional use permit or other required application is first approved in accordance with the provisions of the Municipal Code.
45. *The applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demands.*
46. The operator of the establishment shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
47. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **Flyn' Fish Oyster Bar & Grill** including, but not limited to, **Conditional Use Permit No. UP2011-034** and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the

City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 2

Draft Resolution for Denial

RESOLUTION NO. #####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING CONDITIONAL USE PERMIT NO. UP2011-034 FOR A FOOD SERVICE, LATE-HOURS USE LOCATED AT 2304 WEST OCEAN FRONT (PA2011-199)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Stephen Loomis, with respect to property located at 2304 West Ocean Front, and legally described as Parcel 1 of Parcel Map No. 86-196, as per map recorded in Book 244, Pages 33 through 34 of Parcel Maps, requesting an amendment to an existing conditional use permit
2. The applicant proposes to change the seating configuration of an existing eating and drinking establishment with the addition of a bar and to expand the hours of operation to allow for breakfast service on weekend mornings. The proposed hours of operation are from 11:00 a.m. to 12:00 midnight on weekdays and from 9:00 a.m. to 12:00 midnight on weekends. No other changes to the establishment are proposed.
3. The subject property is located within the Commercial Visitor-Serving (CV) Zoning District and the General Plan Land Use Element category is Visitor-Serving Commercial (CV).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor-Serving Commercial (CV-B).
5. A public hearing was held on January 19, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. REQUIRED FINDINGS.

Pursuant to Section 20.20.020 of the Zoning Code, eating and drinking establishments classified as *Food Service, Late Hours*, require the approval of a conditional use permit within the Commercial Visitor-Serving Zoning District. The existing establishment operates pursuant to Use Permit No. UP3200 (as amended December 6, 1990). The requested change in hours of

operation and the addition of a bar is considered a substantial change in operation that requires an amendment to UP3200. The Planning Commission may approve a conditional use permit only after making each of the five required findings set forth in Section 20.52.020.F. In this case, the Planning Commission was unable to make the required findings based upon the following:

1. The Planning Commission determined, in this case, that the proposed amendment to Use Permit No. 3200 for the eating and drinking establishment with late hours is not consistent with the legislative intent of Title 20 of the NBMC. The proposed oyster bar will also be used to serve alcoholic beverages and may prove detrimental to the community because the establishment is located in an area that is already over concentrated with alcohol licenses.
2. The design, location, size, and operating characteristics of the use are not compatible with the allowed uses in the vicinity. The increased hours of operation may result in increased noise that would result in negative impacts to residents in the vicinity and would not be compatible with the quiet enjoyment of the nearby residential properties.
3. The site is not physically suitable in terms of design, location, shape, size, operating characteristics. The property does not provide any on-site parking and the establishment only provides three off-site parking spaces to accommodate the proposed use. The requested changes in operation will intensify the existing demand for parking in the area and could prove detrimental to the area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby denies Use Permit No. UP2011-034.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 19TH DAY OF JANUARY, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY:_____
Michael Toerge, Chairman

BY:_____
Fred Ameri, Secretary

Attachment No. PC 3

Site Photographs



Front View



View from W. Ocean Front and 23rd St Intersection



Front View of Off-Site Parking Lot



View of Off-Site Parking Lot

Attachment No. PC 4

Project Plans

Attachment No. PC 5

Planning Commission Approval and
Minutes of UP3200

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KURLANDER
PERSON
TURNER
WINBURN

City of Newport Beach

ROLL CALL

INDEX

LOCATION: Lots 3 and 4, Block 23, Newport Beach Tract (restaurant site), located at 2306 West Ocean Front, and Lots 19, 20, and 21, Block 22, Newport Beach Tract (off-site parking site), located at 111, 113 and 115 22nd Street, in Central Newport.

ZONE: SP-6

APPLICANT: Zeppa, Inc., Newport Beach

OWNER: Piero Serra, Corona del Mar

Commissioner Goff referred to Use Permit No. 3200, Condition No. 5 regarding "an appropriate license be secured from the State Alcoholic Beverage Commission", and he discussed with James Hewicker, Planning Director, and Carol Korade, Assistant City Attorney, if the condition should specify the type of liquor that would be sold on the premises. Mr. Hewicker explained that the Planning Commission could make the distinction between beer and wine, or other types of alcoholic beverages. Mr. Hewicker further explained that the applicant would not be required to come back to amend the use permit if they wanted to serve other types of alcoholic beverages, unless the condition made a distinction of the type of alcoholic beverages. In response to Commissioner Goff's question if the applicant could utilize one liquor license for the adjoining "bed and breakfast" hotel as well as the restaurant, Mr. Hewicker replied that it is the intent of the applicant to only serve wine or an apertif at the hotel, and that he did not envision that the approval of beer and wine or alcoholic beverages in the restaurant, adjoining the hotel, would allow the applicant to serve alcohol beverages in the hotel.

In response to questions posed by Commissioner Winburn referring to Use Permit No. 3200, Condition No. 2, regarding the availability of the off-site parking, Mr. Hewicker replied that the intent of staff was not to allow the restaurant to open to full capacity until parking is available in the off-site parking lot.

The public hearing was opened in connection with this item, and Mr. Jim Skaug, architect, appeared before the Planning Commission on behalf of the applicant. Mr. Skaug referred to Commissioner Goff's aforementioned

EICHENHOFER
 GOFF
 KOPPELMAN
 KURLANDER
 PERSON
 TURNER
 WINBURN

City of Newport Beach

ROLL CALL

INDEX

concern, and replied that that the "bed and breakfast" hotel is a separate operation from the proposed restaurant, and that there would be two separate liquor licenses.

Mr. Skaug referred to Use Permit No. 3200, Condition No. 2, regarding the square footage of "net public area" that would be utilized before 7:00 p.m., and stated that the owner of the off-site parking lot has revised the hours when the parking lot would be available to the applicant; therefore, the applicant is requesting that the condition be amended to 6:00 p.m. Monday through Thursday, and 2:00 p.m. on Friday.

In reference to Condition No. 9, requiring that the roof equipment shall be screened from view, Mr. Skaug commented that because of the height of the building, the roof equipment would not create a view blockage or an eyesore to the adjacent properties. Mr. Hewicker replied that the condition could be modified to state "if required by staff" because staff's intent was not to create any bulk if the equipment would not be visible from the street or adjoining properties.

In reference to Condition No. 18, regarding the off-site parking agreement, Mr. Skaug referred to the staff report and said that the applicant should have to provide a minimum of 11 parking spaces as opposed to 16 parking spaces, taking into consideration the 7 parking space credit that the retail square footage of the building merits. William Laycock, Current Planning Administrator, replied that staff suggested 16 parking spaces; however, the applicant was proposing 18 parking spaces, including 2 parking spaces that were going to be located on-site for employees. Mr. Laycock said that 18 parking spaces were going to be provided even though the applicant does have a credit of 7 parking spaces. Mr. Skaug replied that if the applicant should lose the parking lot in the future then the applicant would be conditioned to provide for parking spaces that would be greater than is minimally required for the restaurant. Mr. Skaug stated that the applicant may want to have "trade-offs" with the neighbors, and that 18 parking spaces could create a hardship on the applicant in the future.

In response to a question posed by Commissioner Turner, Mr. Laycock replied that 18 parking spaces would be required for the restaurant use based on 1 parking space for each 40 square feet "net public area", and

EICHENHOFER
GOFF
KOPPELMAN
KURLANDER
PERSON
TURNER
WINBURN

City of Newport Beach

ROLL CALL

INDEX

with the parking credit of 7 parking spaces, only 11 parking spaces would be required. Mr. Hewicker commented that 9 parking spaces would be required, not including 2 parking spaces in the garage. Mr. Skaug replied that the 2 parking spaces in the garage be included for the daytime restaurant use, and that said parking spaces be available to hotel guests overnight. Mr. Hewicker recommended that Condition No. 18 be modified from 16 parking spaces to 11 parking spaces.

In response to a question posed by Mr. Laycock regarding the off-site parking agreement commencing on September 1, 1986, Mr. Skaug replied that the applicant has allowed 13 weeks to process the required permits; however, they will come back with the necessary documents if the restaurant opens before September 1, 1986.

In response to questions posed by Commissioner Eichenhofer regarding a trash area, Mr. Skaug replied that there will be trash compactor in the building, and that there could be difficulty if there was a condition requiring a trash area outside of the building because of the limited space. He said that the applicant has not studied a trash area up to this point.

The public hearing was closed at this time.

Motion

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Commissioner Turner made a motion to approve Use Permit No. 3200, including the following amendments: to amend Condition No. 2 from 7:00 p.m. to 6:00 p.m.; Condition No. 8 adding "If required by the Planning Director, the roof equipment shall be screened....."; Condition No. 18 be amended guaranteeing a minimum of 11 parking spaces instead of 16 parking spaces; and Variance No. 1130, subject to the findings and conditions in Exhibit "A".

Commissioner Goff asked if the 6:00 p.m. as opposed to 7:00 p.m. off-site parking agreement is consistent with the requirements of the building, and if the parking lot would be needed for the tenants of the building prior to 7:00 p.m.? Mr. Hewicker replied that Mr. Skaug previously testified that there would be a one hour overlap. Commissioner Turner opined that the intent of the motion is to include the off-site parking agreement.

Chairman Person stated that he would support the motion.

EICHENHOFFER
 GOFF
 KOPPELMAN
 KURLANDER
 PERSON
 TURNER
 WINBURN

City of Newport Beach

ROLL CALL

INDEX

All Ayes

Motion voted on to approve Use Permit No. 3200 including amendments to Conditions No. 2, No. 8, No. 18, and Variance No. 1130, subject to the findings and conditions in Exhibit "A". MOTION CARRIED.

Use Permit No. 3200FINDINGS:

1. The project is consistent with the adopted goals and policies of the General Plan and the adopted Local Coastal Program, Land Use Plan.
2. The project will not have any significant environmental impact.
3. That the off-site lot is so located as to be useful in connection with the proposed restaurant use.
4. That parking on such lot will not create undue traffic hazards in the surrounding area, providing that the valet parking service does not utilize the adjoining streets or alleys.
5. That a leasehold of the off-site parking lot is of adequate duration to serve the restaurant use.
6. That the waiver of the development standards as they pertain to circulation, walls, landscaping, parking lot illumination, and utilities, will not be detrimental to adjoining properties.
7. That the approval of a modification to the Zoning Code so as to permit tandem parking spaces and a parking attendant at the off-site parking lot will not under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City and further that the proposed modification is consistent with the legislative intent of Title 20 of this Code.
8. The approval of Use Permit No. 3200 will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals,

EICHENHOFER
GOFF
KOPPELMAN
KURLANDER
PERSON
TURNER
WINBURN

City of Newport Beach

ROLL CALL

INDEX

comfort and general welfare of persons residing and working in the neighborhood or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.

CONDITIONS:

1. That development shall be in substantial conformance with the approved plot plan, floor plans and elevations except as may be noted below.
2. That only the front portion of the restaurant facility, consisting of 350 sq.ft. of "net public area", shall be used for dining or waiting purposes before 6:00 p.m., Monday through Thursday, and before 2:00 p.m. on Friday.
3. That the hours of operation shall be restricted to the hours between 11:00 a.m. and 12:00 midnight daily.
4. That the service of alcoholic beverages shall be for the patrons of the restaurant only and shall be incidental to the serving of meals.
5. That the appropriate license be secured from the State Alcoholic Beverage Commission for the on-site consumption of alcoholic beverages.
6. That a washout area for trash containers be provided in such a way as to allow direct drainage into the sewer system and not into the Bay or the storm drains.
7. That grease interceptors shall be installed on all fixtures in the restaurant facility where grease may be introduced into the drainage systems in accordance with the provisions of the Uniform Plumbing Code.
8. That all trash areas shall be screened from adjoining properties and from adjoining streets. No trash shall be stored in the street or alley.
9. If required by the Planning Director, the roof equipment shall be screened from view in such a manner that is architecturally compatible with the

EICHENHOFER
GOFF
KOPPELMAN
KURLANDER
PERSON
TURNER
WINBURN

City of Newport Beach

ROLL CALL

INDEX

remodeled structure. The Planning Department shall approve the screening prior to the issuance of building permits.

10. That all signs shall conform to the provisions of Chapter 20.06 of the Municipal Code.
11. That no dancing or live entertainment shall be permitted in the restaurant facility, unless an amended use permit is approved by the Planning Commission.
12. That the development standards pertaining to parking lot illumination, circulation, walls, landscaping, and utilities shall be waived.
13. That the project shall conform to all applicable provisions of the Uniform Building Code and all local amendments.
14. That two parking spaces shall be provided for restaurant employees' vehicles in the on-site garage (Parcel No. 1 of Resubdivision No. 826) during all hours of operation. The remaining restaurant employees shall park their vehicles on the off-site parking lot after 7:00 p.m., Monday through Thursday; after 2:00 p.m. on Friday; and on weekends.
15. That the off-site parking lot shall be manned by a parking attendant at all times during the hours of its use.
16. That no valet parking service on the public rights-of-way shall be offered to restaurant patrons.
17. That a sign or map shall be displayed on the front of the restaurant facility that indicates to restaurant patrons the location and the permitted hours of the off-site parking lot.
18. That an off-site parking agreement be approved by the City Council, guaranteeing that a minimum of 11 parking spaces shall be provided on property located on Lots 19, 20, and 21, Block 22, Newport Beach Tract (111, 113, and 115 22nd Street) for the duration of the restaurant use.

EICHENHOFER
 GOFF
 KOPELMAN
 KURLANDER
 PERSON
 TURNER
 WINBURN

City of Newport Beach

ROLL CALL

INDEX

19. Should the off-site parking agreement lease be terminated for any reason, the "net public area" of the restaurant facility shall be reduced to 350 sq.ft. immediately, unless the Planning Commission and City Council approve another off-site parking agreement prior to the termination of said lease.
20. That all conditions of Resubdivision No. 826 shall be fulfilled.
21. That the Planning Commission may add or modify conditions of approval to this use permit, or recommend to the City Council the revocation of this use permit, upon a determination that the operation which is the subject of this use permit causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
22. This use permit shall expire unless exercised within 24 months from the date of approval as specified in Section 20.80.090 A of the Newport Beach Municipal Code.

VARIANCE No. 1130FINDINGS:

1. That there are exceptional or extraordinary circumstances applying to the land, building, and use proposed in this application, which circumstances and conditions do not generally apply to land, building, and/or uses in the same district inasmuch as the existing building with its flat roof currently exceeds the height limit. The proposed heating, ventilating, air conditioning unit and hood exhaust are necessary for the establishment of the restaurant which is a permitted use in their district.
2. That the granting of this variance to allow specific mechanical equipment on the roof is necessary for the preservation and enjoyment of substantial property rights of the applicant in that no other reasonable alternative exists.
3. That the granting of this variance request will not under the circumstances of this particular

EICHENHOFFER
GOFF
KOPPELMAN
KURLANDER
PERSON
TURNER
WINBURN

City of Newport Beach

ROLL CALL

INDEX

case be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, in that no views will be impacted, and only a small portion of the equipment will be visible.

CONDITIONS:

1. That the development shall be in substantial conformance with the approved elevation except as noted below.
2. That the roof equipment shall be screened from view in such a manner that is architecturally compatible with the remodeled structure. The Planning Department shall approve the screening prior to the issuance of building permits.
3. This variance shall expire unless exercised within 24 months from the date of approval as specified in Section 20.82.090 A of the Newport Beach Municipal Code.

* * *

Use Permit No. 3205 (Public Hearing)

Item No.8

Request to establish a restaurant with on-sale beer and wine on the Fun Zone property in the C-1 District, and to waive a portion of the required off-street parking spaces.

UP 3205

Continued
to
June 19,
1986

LOCATION: Parcel 1 of Parcel Map 82-706
(Resubdivision No. 724), located at 600 Edgewater Place, bounded by East Bay Avenue, Washington Street, Palm Street, and Newport Bay, in Central Balboa.

ZONE: C-1

APPLICANT: Milano's Pizza Restaurant Balboa, Inc.,
Newport Beach

OWNER: Balboa Fun Zone, Ltd., Newport Beach

Attachment No. PC 6

Planning Commission Approval and
Minutes of UP3200 (Amended)

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EDWARDS
GLOVER
MERRILL
PERSON
POMEROY

CITY OF NEWPORT BEACH

ROLL CALL	INDEX
<p>19. That the Planning Commission may add to or modify conditions of approval to this use permit, or recommend to the City Council the revocation of this use permit upon a determination that the operation which is the subject of this amendment causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.</p> <p>20. That this use permit shall expire unless exercised within 24 months from the date of approval as specified in Section 20.80.090 A of the Newport Beach Municipal Code.</p> <p style="text-align: center;">* * *</p> <p><u>Use Permit No. 3200 (Amended)(Public Hearing)</u></p> <p>Request to amend a previously approved use permit which permitted the establishment of a restaurant facility with on-sale alcoholic beverages on property located in the Cannery Village/McFadden Square Specific Plan Area. Said approval also included the use of an off-site parking location for all of the required off-street parking spaces. The proposed amendment involves: a request to waive a portion of the previously required parking spaces; a request to locate the remaining portion of the required parking spaces in a new off-site parking lot located at 111 23rd Street and on an adjoining parcel; a request to reduce the "net public area" of the restaurant; and a modification to the Zoning Code so as to establish a valet parking service with tandem parking spaces in conjunction with the existing restaurant.</p> <p>LOCATION: Parcels 1 and 2, Parcel Map 86-196 (Resubdivision No. 826) (restaurant site), located at 2306 West Ocean Front, and Lots 27 and 28, Block 23, Newport Beach Tract (off-site parking site), located at 111 23rd Street, in Central Newport.</p> <p>ZONE: SP-6</p>	<p><u>Item No.12</u></p> <p><u>UP3200A</u></p> <p><u>Approved</u></p>

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MERRILL
PERSON
POMEROY

CITY OF NEWPORT BEACH

ROLL CALL		INDEX
	APPLICANT: Epic Properties, Newport Beach	
	OWNER: Same as applicant	
	<p>William Laycock, Current Planning Manager, addressed the addendum to the staff report, and he explained that inasmuch as the applicant is requesting further credit of the former uses on the property, the addendum reflects a credit of seven parking spaces that were originally approved for the restaurant use alone. Mr. Laycock indicated that it is the applicant's opinion that a credit as well as the number of parking spaces that are existing on the off-site lot have an allocation of 45 parking spaces instead of 38 parking spaces as reported in the original staff report. Mr. Laycock stated that it is staff's opinion that it is inappropriate to grant further parking credit for the restaurant based on the hotel's nonconforming parking condition because separate use permits were applied for the hotel and the restaurant.</p>	
	<p>In response to a question posed by Chairman Debay with regard to the loss of the off-site parking, Mr. Laycock explained that the parking is now being leased on an informal basis to the occupants of another restaurant, known previously as the Rex Restaurant.</p>	
	<p>Commissioner Glover and Mr. Laycock discussed the applicant's request to establish a valet pick up station in the City's Municipal Parking Lot in McFadden Square. The Planning Commission and Mr. Hewicker reviewed the number of restaurants that are allowed to park in Municipal Parking Lots throughout the City. In response to a question posed by Chairman Debay regarding automobiles that would pull up to the restaurant for valet parking, Rich Edmonston, City Traffic Engineer, stated that the proposal that was reviewed and approved by the Traffic Affairs Committee, and has been forwarded to the City Council for approval, is to provide three angled parking spaces to allow for a valet pick up station in front of the restaurant and hotel.</p>	
	<p>The public hearing was opened in connection with this item, and Mr. Jim Skaug, architect, appeared before the Planning Commission on behalf of the applicant. Mr. Skaug distributed photographs of the existing building and a brochure from the hotel. In response to a question posed by Chairman Debay regarding the</p>	

DEBAY
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EDWARDS
GLOVER
MERRILL
PERSON
POMEROY

CITY OF NEWPORT BEACH

ROLL CALL

INDEX

findings and conditions in Exhibit "A", Mr. Skaug referred to the valet parking drop-off area, whereby he explained that the new parking alignment for McFadden Square increases the total number of parking spaces by two parking spaces, and there will not be a net loss of parking spaces across the frontage of the hotel. In response to Mr. Laycock's foregoing statement regarding staff's opinion, Mr. Skaug explained that the applicant is adhering to the Municipal Code that provides for "grandfather" parking wherein he referred to 'uses and structures'. Mr. Skaug explained the Doryman's Inn existing parking requirements. Mr. Skaug addressed previous retail credits inasmuch as it has been determined that the hotel lobby is not an intensification of use and does not require extra parking. Mr. Skaug explained that up to 14 automobiles are parked in the lot that the City approved for use of 10 automobiles and 3 tandem parking spaces, and the garage has been utilized for up to 5 automobiles on a number of occasions. Mr. Skaug stated that the garage was previously approved for five employee parking spaces.

In response to a question posed by Chairman Debay with respect to the findings and conditions in Exhibit "A", Mr. Skaug referred to Condition No. 2, stating "That all previous applicable conditions of approval of Use Permit No. 3200 shall be fulfilled and shall remain in effect." wherein he responded that all of said conditions would no longer be applicable. Discussion ensued regarding the aforementioned condition.

Mr. Hewicker addressed Mr. Skaug's remarks concerning the Doryman's Inn parking requirements. Mr. Hewicker acknowledged that the restaurant lost the parking after it moved to Fashion Island and now the applicant is requesting another restaurant at the subject location; however, because there is no parking available, the applicant is attempting to acquire credit which was given up when the use permits were originally approved. He indicated that it does not make sense to try to solve a problem by creating another wrong. Mr. Hewicker suggested that if the applicant requires time to work out concerns with the staff, then the Planning Commission should continue the item.

Chairman Debay concluded that the primary concern would appear to be the lack of an off-site parking lot. Mr. Skaug addressed a statement made by Commissioner Person during the December 8,

DEBAY
DI SANO
EDWARDS
GLOVER
MERRILL
PERSON
POMEROY

CITY OF NEWPORT BEACH

ROLL CALL

INDEX

1988 Planning Commission meeting regarding nonconforming rights. Mr. Skaug responded that the "nonconforming rights" would apply to the building or apply to the parking spaces that were in existence when the process was started. He said that the applicant did not perceive a parking crunch, and, therefore, the applicant did not attempt to recapture the parking credits. Mr. Skaug indicated that the parking lot was developed by the applicant and has subsequently become a financial liability to maintain. Mr. Hewicker stated that the parking lot is being utilized for existing uses. Mr. Skaug responded that the applicant is requesting that the parking lot be used by the restaurant and the hotel wherein he explained that after studying the parking demands for the last calendar year at the hotel, that the average demand per day is 8.3 parking spaces, giving 10 excess parking spaces and to allot said excess spaces to the restaurant parking. Mr. Skaug stated that from 10:00 a.m. to 4:00 p.m. the parking lot is virtually empty based on the hotel's activity. Mr. Hewicker indicated that the applicant's proposal is to provide three additional parking spaces in the parking lot for restaurant use and although there would be 10 additional parking spaces on the parking lot available for the restaurant, the applicant would not dedicate said parking spaces to the restaurant use. Mr. Skaug stated that the proposal submitted to the Traffic Committee is that there would be a full time valet service whenever the restaurant was open, and the valets would be responsible to see that there would be space available in the parking lot or in the garage to handle the parking demands. Mr. Hewicker expressed his concern that the applicant will request future expansion on the property or adjacent property, and will request the 10 parking spaces for the expanded uses, and he indicated that it has to be recognized that the existing uses require parking and the subject spaces should be dedicated for those uses. Mr. Skaug concurred wherein he stated that the parking lot was created to accommodate the existing uses.

In response to a question posed by Chairman Debay, Mr. Laycock explained that the subject uses would be short 5 parking spaces, and 11 parking spaces were lost by the loss of the off-site parking lot. Mr. Skaug and Commissioner Edwards discussed the parking of the former Zeppa Restaurant that was located adjacent to the subject property.

DEBAY
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GLOVER
MERRILL
PERSON
POMEROY

CITY OF NEWPORT BEACH

ROLL CALL

INDEX

Motion

*

There being no others desiring to appear and be heard, the public hearing was closed at this time.

Commissioner Person recommended that staff work with the applicant concerning the conditions of approval of Use Permit No. 3200 as previously discussed. Motion was made to approve Use Permit No. 3200 (Amended) subject to the findings and conditions in Exhibit "A". He stated that the Planning Commission has the right to call back the subject use permit if it was determined that the operation is detrimental to the community.

Commissioner Pomeroy supported the motion based on the property owner's ability to solve problems and the approval would allow him to continue a 'first class operation'. He explained that if there is a problem in the future concerning the subject application, that the Planning Commission may recall the subject use permit in accordance with Condition No. 12 in Exhibit "A".

In response to a request for clarification by Chairman Debay, Mr. Edmonston explained that the applicant was informed that the City would not support the use of public property for a valet pickup and drop-off area. It was recommended by the City Manager to the applicant to contact the Traffic Affairs Committee. He stated that if the Planning Commission approved the subject application, including the valet operation, then the City Council Agenda would include an action for them to approve the valet use for a trial period. He further stated that the Traffic Affairs Committee would monitor the valet operation. Mr. Edmonston referred to Condition No. 10 in Exhibit "A" stating "...the proposed valet station shall be located in the off-site parking lot unless the City Council approves a valet station on public right-of-way."

Commissioner Glover supported the motion. She stated her concern that two restaurants have moved to Fashion Island, and she expressed a desire that the subject uses be successful.

Commissioner Edwards stated that a reason the restaurants have moved to Fashion Island would be the parking problems that exist on the Balboa Peninsula. Commissioner Edwards stated that he would reluctantly oppose the motion on the basis that he supported the previous suggestion that the applicant work with staff regarding

DEBAY
DI SANO
EDWARDS
GLOVER
MERRILL
PERSON
POMEROY

CITY OF NEWPORT BEACH

ROLL CALL

INDEX

any concerns they may have with respect to the conditions of approval in the original use permit. Commissioner Edwards and Commissioner Person discussed the success of the McFadden Square restaurants based on the availability of parking in the area.

Mr. Hewicker referred to Condition No. 6 in Exhibit "A", stating "That prior to reopening the restaurant or the implementation of this Use Permit, the applicant shall fully comply with all conditions of approval for Resubdivision No. 897." and he addressed the length of time required to accomplish the conditions and to have the Final Map recorded. Mr. Skaug reappeared before the Planning Commission wherein he responded that the Final Map was submitted to the County of Orange on Friday, November 30, 1990. Mr. Skaug agreed that the restaurant would not open prior to the recordation of the Final Map.

Ayes
Noes

* * * * *

Motion was voted on, MOTION CARRIED.

Findings:

1. That the proposed project is consistent with the General Plan and the Local Coastal Program, Land Use Plan, and is compatible with surrounding land uses.
2. The project will not have any significant environmental impact.
3. That adequate parking exists to serve the subject restaurant.
4. The off-site parking area is located so as to be useful to the subject restaurant use.
5. Parking on such off-site parking areas will not create undue traffic hazards in the surrounding area.
6. That the restaurant site and the off-site parking areas are in the same ownership.
7. That the design of the proposed improvements will not conflict with any easements acquired by the public at large

DEBAY
DI SANO
EDWARDS
GLOVER
MERRILL
PERSON
POMEROY

CITY OF NEWPORT BEACH

ROLL CALL

INDEX

for access through or use of property within the proposed development.

8. That public improvements may be required of a developer per Section 20.80.060 of the Municipal Code.
9. The approval of a modification to the Zoning Code so as to permit tandem parking spaces and a valet parking service will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing and working in the neighborhood or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City and further that the proposed modification is consistent with the legislative intent of Title 20 of this Code.
10. The approval of Use Permit No. 3200 (Amended) under the circumstances of this case will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing and working in the neighborhood, or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.

CONDITIONS:

1. That the subject project shall be in substantial conformance with the approved site plan and restaurant floor plan.
2. That all previous applicable conditions of approval of Use Permit No. 3200 shall be fulfilled and shall remain in effect.
3. That all but 3 of the required 15 parking spaces for the restaurant are waived.
4. The applicant shall record a covenant, guaranteeing that the subject parcels used for off-site parking for the restaurant shall remain in the same ownership as the property on which the restaurant is located.

POMEROY
PERSON
MERRILL
CLOVER
EDWARDS
DI SANO
DEBAY

CITY OF NEWPORT BEACH

ROLL CALL	INDEX
<p>5. That the on-site vehicular and pedestrian circulation system be subject to further review by the Public Works Department and the City Traffic Engineer.</p> <p>6. That prior to reopening the restaurant or the implementation of this Use Permit, the applicant shall fully comply with all conditions of approval for Resubdivision No. 897.</p> <p>7. That all improvements be constructed as required by Ordinance and the Public Works Department.</p> <p>8. That the temporary asphalt patch in the concrete alley adjacent to the hotel and the existing water meter be removed, the concrete saw-cut to provide a clean edge, and repaired with concrete eight (8) inches thick. This work shall be completed under an encroachment permit issued by the Public Works Department prior to issuance of any Building Permits.</p> <p>9. That the applicant shall obtain the approval of the Coastal Commission prior to the issuance of any building permits or opening of the restaurant.</p> <p>10. That the subject restaurant shall be permitted to operate a full time valet parking service in conjunction with the restaurant operation. However, the proposed valet station shall be located in the off-site parking lot unless the City Council approves a valet station on public right-of-way.</p> <p>11. That all of the allowable "net public area" within the restaurant (580± sq.ft.) may be used during the approved hours of operation of 11:00 a.m. to 12:00 midnight.</p> <p>12. That the Planning Commission may add to or modify conditions of approval to this use permit, or recommend to the City Council the revocation of this use permit, upon a determination that the operation which is the subject of this use permit, causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.</p>	

DEBBY
DI SANO
EDWARDS
GLOVER
MERRILL
PERSON
POMEROY

CITY OF NEWPORT BEACH

ROLL CALL	INDEX
13.	That this Use Permit shall expire unless exercised within 24 months from the date of approval as specified in Section 20.80.090A of the Newport Beach Municipal Code.
	* * *
	<u>Use Permit No. 3387 (Continued Public Hearing)</u>
	Request to expand an existing non-profit private club associated with substance recovery located in an existing commercial building which is nonconforming relative to the off-street parking requirement. The building is located in the "Specialty Retail" area of the Cannery Village/McFadden Square Specific Plan Area. The proposed use permit involves a request to waive the additional required off-street parking in conjunction with the expansion of the facility into the ground floor portion of the building which is used for a group meeting room, a smaller private meeting room and miscellaneous storage. The existing club activities on the second floor of the building include a club room with a coffee bar, bathrooms, a small meeting room, an office and storage room. The request to expand the private club facility also represents a conversion of a portion of the building from a Base FAR to a Reduced FAR use which also requires the approval of a use permit.
LOCATION:	Lots 32 and 33, Block 431, Lancaster's Addition, located at 414 32nd Street, on the southerly side of 32nd Street between Newport Boulevard and Villa Way, in the Cannery Village/McFadden Square Specific Plan Area.
ZONE:	SP-6
APPLICANT:	Newport Beach Alano Club, Inc., Newport Beach
OWNER:	Same as applicant

Item No.12

UP3387

Approved

Attachment No. PC 7

Offsite Parking Covenant

RECORDING REQUESTED BY
AND RETURN TO:

91-141572
\$11.00
C5

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

-915 AM

MAR 28 '91

Epic Properties, Ltd.
2306 West Oceanfront
Newport Beach, CA 92663

Lee A. Branch RECORDER

Space Above This Line For Recorder's Use

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

WHEREAS, Epic Properties, Ltd., a California partnership ("Owner"), is the owner of the real property and improvements known as the Portofino Beach Hotel and Renato located in the City of Newport Beach, County of Orange, State of California, which is legally described as follows:

Parcel 1

Lots 3 & 4 of block 23 of Newport Beach, and the northwest 30 feet of lots 29 and 30 of block 23 of Newport Beach, page 26 of Book 3 of Miscellaneous Maps, Records of said Orange County, California.

Parcel 2

Lots 27 & 28 of block 23 of Newport Beach, as shown on a map recorded in page 25 of Book 3 of Miscellaneous Maps, Records of said Orange County, California.

WHEREAS, the Owner has applied for, and obtained from the City of Newport Beach, approval of Use Permit No. 3200 (Amended) ("Use Permit") which authorizes the operation of a restaurant on Parcel 1 and the provision of the required off-street parking for the restaurant on Parcel 2 (hereinafter referred to as the "Property"); and

WHEREAS Condition No. 4 requires that the Owner shall record a covenant, guaranteeing that the subject parcels used for off-site parking for the restaurant shall remain in the same ownership as the property on which the restaurant is located.

WHEREAS, the Owner has caused this Declaration to be prepared, submitted to the City and approved by the City Attorney as indicated below, and then recorded to satisfy said Condition

NOW, THEREFORE, in consideration of the approval of Use Permit No. 3200 (Amended), and in satisfaction of Condition No.4, the Owner hereby declare that the Property shall be subject to the following covenants, conditions, and restrictions:

1. That the Property shall be held together in single ownership for the duration of the restaurant use located on Parcel 1.

2. The covenants, conditions and restrictions contained in this declaration shall commence when the restaurant on the Property opens for business. This Declaration shall terminate when all restaurant operations on the Property cease and the Owners cause a Notice of Termination of this declaration to be served on the City Attorney and recorded in the Office of the Recorder of Orange County, California. In the event a Notice of Termination of this Declaration is recorded, no restaurant use shall occur on the Property unless and until all necessary approvals have been obtained from the City of Newport Beach.

3. The covenants, conditions, and restrictions contained in this Declaration shall run with the land and bind the successors and assigns of Owner subject only to the termination provisions in Paragraph 2. This Declaration shall bind all parties claiming an interest in, or a right to operate, the successors or assigns, and such persons are bound to conform to, and observe, all restrictions on the use of the property con-

tained within this Declaration and all other conditions to Use
Permit No. 3200 (Amended).

IN WITNESS WHEREOF, the party hereto has caused this
Agreement to be executed on this 27th day of March, 1991.

Epic Properties, Ltd., a
California partnership

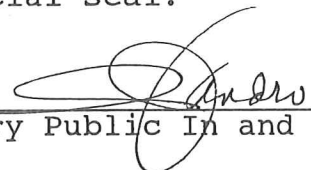
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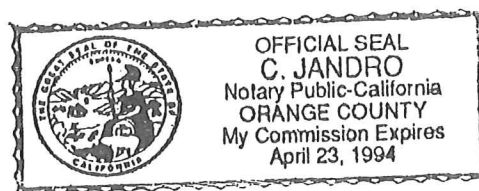
Marie Christine Luetto
Authorized Agent of
Epic Investments, Inc.,
General Partner

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On this 27 day of MARCH in the year 1991
before me, the undersigned, a Notary Public in and for the
State of California personally appeared MARIE CHRISTINE LUETTO
known to me, or proved to me on the basis of satisfactory evi-
dence, to be the person(s) whose names are subscribed to this
Agreement and acknowledged to me that they executed the same and
that said person(s) are known to me, or proved to me have the
authority to execute such document.

WITNESS my hand and official seal.


Notary Public In and for Said State



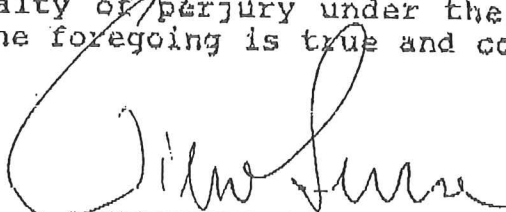
CORPORATE RESOLUTION

I, Piero Serra, duly appointed President and Secretary of Epic Investments, a corporation incorporated under the laws of the State of California, do hereby certify that the following is a full, true and correct copy of a resolution, which is still in force and effect, of the Board of Directors of said corporation, which consists solely of myself, duly and regularly adopted by the Board of Directors of said corporation in all respects as required by law and by the by-laws of said corporation on the 27th day of March, 1991:

"RESOLVED, that Marie Christine Luetto, act as agent of said corporation in authorizing and directing the signing and approval of the Declaration of Covenants, Conditions, and Restrictions dated March 27, 1991 as general partner"

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 27, 1991

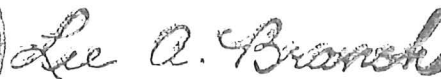

Piero Serra, President and
Secretary of Epic Investments,
Inc., a California corporation

I CERTIFY THAT IF THIS SEAL IS AFFIXED
IN PURPLE INK THIS IS A TRUE AND
CORRECT COPY OF THE PERMANENT RECORD
FILED OR RECORDED IN THIS OFFICE.

MAR 28 1991
DATE _____ FEE 350



COUNTY RECORDER



ORANGE COUNTY, STATE OF CALIFORNIA

Attachment No. PC 8

January 14, 1991

City Council Valet Approval

CITY OF NEWPORT BEACH

MINUTES

COUNCIL MEMBERS							INDEX
ROLL CALL	HEDGES	WITT	TURNER	SPANSONE	HART	COX	
Motion All Ayes						x	Ord 91-3 Motion was made to adopt Ordinance No. 91-3, being, AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH SETTING RATIONING LEVELS AND ESTABLISHING SURCHARGES FOR WATER USE EXCEEDING THE RATION LEVEL AND RESCINDING ORDINANCE NO. 90-27.
Motion All Ayes	x						3. Report from Traffic Affairs Committee concerning <u>VALET DROP-OFF AREA FOR PORTOFINO RESTAURANT.</u> Motion was made to approve the request of Portofino Restaurant to use the public street for a valet drop-off subject to the findings and conditions set forth in Exhibit "A" of staff report. James Skaug, representing the Portofino Restaurant, addressed the Council and requested that Condition No. 2 be modified to allow the valet service to park vehicles in the metered Newport Pier parking lot during nonpeak traffic hours. It was indicated by staff that this issue was discussed at the Traffic Affairs Committee and rejected, and therefore, the motion on the floor was voted on and carried. TAC/Porto- fino Rest (85) 2306 W Ocean Front
Motion All Ayes						x	4. Report from the Public Works Department concerning <u>APPEAL OF W. L. ROSENDALE FROM DENIAL OF AN APPLICATION TO CONSTRUCT A 4-FOOT HIGH FENCE ENCROACHING ONE FOOT INTO THE PUBLIC RIGHT-OF-WAY OF BALBOA AND ABALONE AVENUES ADJACENT TO 1600 BALBOA AVENUE.</u> A supplemental staff report was presented, advising that the applicant has revised his plans and an Encroachment Permit has been issued. In view of the foregoing, motion was made to receive and file the subject report. Encroachmt Permit/ Rosendale (65)

January 14, 1991

CITY COUNCIL AGENDA

ITEM NO. J-3

TO: CITY COUNCIL
FROM: Traffic Affairs Committee
SUBJECT: VALET DROP-OFF AREA FOR PORTOFINO RESTAURANT

RECOMMENDATION

1. Approve the request of Portofino Restaurant to use the public street for a valet drop-off subject to the findings and conditions set forth in the attached Exhibit A.

OR

2. Deny the request based upon the findings set forth in Exhibit B.

DISCUSSION

The Traffic Affairs Committee has reviewed the attached request from Circa Designs to use a portion of the public right-of-way for a valet zone. Due to possible problems with the proposal as detailed in the attached meeting minutes, the Traffic Affairs Committee recommends a 90-day trial program.


The hotel and restaurant are located westerly of 23rd Street in the Ocean Front parking lot. The hotel currently has one passenger loading zone. The request is to designate two more spaces for passenger loading for valet purposes in conjunction with the restaurant. The Planning Commission approved the use of valet parking for the restaurant on December 6, 1990. The valet is restricted to the offsite lot unless the City Council approves the use of public right-of-way.

Numerous restaurants have made such requests in the past with only two such approvals having been granted. The two restaurants were the Rex (currently 21 Ocean Front) and Le Biarritz. The Le Biarritz approval is the most recent and was granted in 1984. The recommended conditions for approval in Exhibit A are based upon those applied to Le Biarritz.

The current improvement project for McFadden Square area includes a complete revamping of the parking in this area, including in front of the hotel and restaurant. There will be the same total number of parking spaces in the area as there were before the project began. The request is to designate two of the spaces as passenger loading, which will remove them from the supply of longer-term parking.

The possible benefits to the public of using on-street parking for valet service at this location are reduced congestion created by restaurant patrons looking for a place to park and greater usage of the off-site parking facility.

If the request is approved, the Traffic Affairs Committee will monitor the operation and make a further report to the City Council.


Richard M. Edmonston
Traffic Engineer

RME:bb

WP:PORTOFIN

Attachments: Circa Designs letter dated 10-31-90
TAC minutes dated 11-16-90
Exhibit A
Exhibit B

CIRCA DESIGNS

October 31, 1990

Traffic Advisory Committee
City Of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

Re: Request for approval of "Passenger Unloading Zone" for us of Portofino Beach Hotel and proposed reopening of existing restaurant located at 2304 West Oceanfront.

This request is made to facilitate an efficient and practical valet service which will be available to both hotel guests and restaurant guests during the hours of operation of the restaurant (approximately 6am - midnight.) The request is for an increase from 1 existing to 3 total unmetered passenger unloading zones.

The valet service would primarily utilize a parking lot located adjacent to the hotel/restaurant site (115 23rd Street.) This lot was developed by the hotel owner in 1989 - and the spaces in this lot are not currently required parking for the hotel or restaurant. This lot will accommodate up to 16 vehicles parked via valet service. Valet parking space is also available in the hotel garage for 5 additional vehicles.

The hotel owner, who will be a partner in the new restaurant, is confident that these spaces will be adequate to meet peak hours valet parking demands.

This conclusion has been reached by careful evaluation of the historical requirements for parking of both the hotel and the previous restaurant tenant (Zeppa's.)

The use of "Passenger Unloading Zones" for valet service is somewhat uncommon but certainly not unusual, especially in the immediate vicinity. For example, the "2100 Restaurant" (formerly The Rex), located just 2 blocks south of the proposed site has enjoyed the use of at least 3 spaces for this purpose for a number of years, and they have also enjoyed the use of metered spaces for their valet parking spaces. And, in fact, the approved version of the McFadden Wharf Parking Plan actually increases the number of spaces with the addition of 1 parallel space.

Also, in the new plan, the parking design for the area of proposed new "Passenger Unloading Zone" has increased the number of metered spaces from 12 to 14; therefore, the increase in the number of passenger zones will have a net effect of zero with the respect to available public parking.

CIRCA DESIGNS

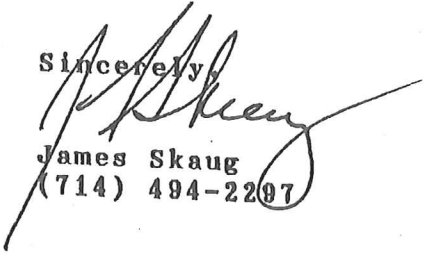
page 2
Traffic Advisory Committee
October 30, 1990

Conclusions:

1. Adequate valet spaces are available in immediately adjacent areas.
2. Valet use of "Passenger Unloading Zones" have been established as a permitted use in the vicinity.
3. Two (2) additional unmetered spaces will have no negative effect on available public parking in the immediate vicinity.

It is our intention that the preceding will assist you in making a favorable recommendation to the City Council.

Sincerely,



James Skaug
(714) 494-2207

City of Newport Beach

Minutes

CITY STAFF TRAFFIC AFFAIRS COMMITTEE

DATE: NOVEMBER 16, 1990

TIME: 2:30 P.M.

PLACE: CITY HALL FIRE DEPARTMENT CONFERENCE ROOM

Members

EDMONSTON
CARSON
DELINO

- b. Request by Portofino Beach Hotel for two additional passenger loading zones for valet service.

PORTO-
FINO
HOTEL

Portofino representative James Skaug feels restaurant at the hotel should have the same privileges as the 21 Oceanfront Restaurant (formerly the Rex) with 2 unmetered, passenger loading zones for valet use from 7 a.m. to 2 a.m. Restaurant would like to test valet operation for 6 months to augment hotel and restaurant business from 7 a.m. to 12 midnight.

In 1986 the first restaurant (Zeppa) operators within the hotel applied for a use permit. The parking lease was sold with the restaurant and parking privileges were terminated.

A new restaurant is scheduled to open in February 1991. The restaurant has 62 seats (less than the 21 Oceanfront Restaurant) with only 4-8 cars in their private parking lot.

Restaurant will be on the Planning Commission agenda in December 1990 for approval of a use permit for attendant parking. The hotel owns two residential lots to self-park 14 cars. The lot is located by an alley that is undesirable to walk through. The other option is to walk past the noisy element at Mutt Lynch's restaurant. The lot now has a full-time attendant and no assigned parking.

Skaug feels if valet service is approved, there would be improved service, more parking lot control, and better visibility to attract customers.

Carson feels Police would encounter problems with westbound Oceanfront traffic and U-turns. Drivers back up in the curve to go down 23rd Street which is several feet closer than driving easterly 100+ yards to access 23rd Street. During summer, cars back up in the curve for 1 to 10 minutes before exiting to merge with 22nd Street traffic. At the end of the hotel parking lot, Carson feels there is concern with: high accident danger, pedestrians, skaters, bicyclists, parking/moving violations.

Skaug feels the new island will encourage valets to go with the direction of flow in conjunction with improved police enforcement. The hotel has upgraded the area and McFadden Square is currently being renovated.

Brahler stated that construction will not provide 2 additional spaces (12 now; proposed 14). There would be a loss of 2 spaces for the general public if valet spaces are granted. Valet could create back-up congestion. The public parking lot has free parking after 6 p.m. Traffic Engineering was opposed to valet parking at the original Rex Restaurant.

Delino feels valet service will improve the identity of the hotel and the area. City has invested money for improvements to the area.

Delino moved approval of a 3-month contingency trial valet parking after opening of restaurant. Item to return to Committee after 90 days or by June 15, 1991 for review and recommendation to City Council. This condition is contingent on approval by Planning Commission of valet operation. Council would approve white parking zones.

MOTION
AYE
NO

X
X
X

EXHIBIT A

FINDINGS AND CONDITIONS OF APPROVAL

ON-STREET VALET AREA FOR RESTAURANT AT 2306 WEST OCEAN FRONT

FINDINGS

1. The approval for the use of a portion of a public street for valet loading is a special circumstance and does not indicate that this concept will be approved for other locations.
2. The use of a portion of the public street for valet loading will not impede the safe flow of vehicular or pedestrian traffic in the Ocean Front parking lot.
3. The requested curbside valet service will facilitate a greater use of the offstreet parking facility.
4. There is a cost of administering this approval as well as a monetary benefit to the applicant of using public right-of-way for valet service. The value of this approval is uncertain, but is no less than \$300 per year.

CONDITIONS

1. The pick-up and delivery of automobiles in conjunction with the restaurant valet service shall be conducted in full conformance with the California Vehicle Code and applicable portions of the Municipal Code.
2. The valet service shall only park customers' vehicles in their offsite facility.
3. The valet operation shall utilize a traffic flow pattern that does not include backing vehicles down Ocean Front.
4. The valet service shall utilize sufficient employees to prevent the capacity of the loading area from being exceeded. Double parking shall not be allowed at any time.

EXHIBIT A (continued)

5. The applicant shall enter into an agreement with the City providing indemnification, naming the City as additional insured on a liability policy providing a minimum of \$1,000,000 coverage and stipulating that the City can revoke this approval in the event of a violation of the Conditions of Approval.
6. Any signs for the valet service shall be subject to further review and approval of the Traffic Engineer and the Planning Director. An Encroachment Permit will be obtained for all signs placed in the public right-of-way.
7. The passenger loading spaces shall be available for all legal use and are not for the exclusive use of the restaurant or any other business.
8. The restaurant shall pay to the City of Newport Beach an annual fee of \$300 for the portion of calendar year 1991. The fee shall be adjusted annually in accordance with the Consumer Price Index for Los Angeles-Long Beach-Anaheim, with payments due January 1 of each succeeding year.

EXHIBIT B

FINDINGS FOR DENIAL

ON-STREET VALET AREA FOR RESTAURANT AT 2306 WEST OCEAN FRONT

1. The loss of public parking spaces would be detrimental to all commercial uses in the area.
2. The loss of public parking spaces in the commercial area will cause increased parking demand in the adjacent residential area.
3. Use of the public street for valet operation would result in additional congestion in an area already suffering congestion during periods of peak activity.

Attachment No. PC 9

Traffic Affairs Committee Approval

City of Newport Beach

Minutes

Members

CITY STAFF TRAFFIC AFFAIRS COMMITTEE

DATE: JUNE 25, 1991

TIME: 2:30 P.M.

PLACE: CITY HALL FIRE DEPARTMENT CONFERENCE ROOM

	EDMONSTON	JACOBS	DELINO		
Roll Call				<p>Edmonston has met with Costa Mesa Traffic Engineer. Costa Mesa will obtain addresses and number of children crossing from Costa Mesa side to determine routes to the school. A yellow flashing light has initial impact which decreases as drivers get used to it. A signal activated by pedestrians is a possibility, but would have to be installed at mid-block. Edmonston watched the school driveway with Police and felt any changes to school lot access would displace traffic onto Dover. Erickson said buses unload at Pembroke crosswalk and block visibility.</p> <p>Issue will be continued for further discussion in August by Committee.</p>	Index
MOTION AYES	X	X	X	<p>b. Review valet drop-off area for restaurant at Portofino Hotel (City Council approved 1-14-91).</p> <p>Edmonston said that the Use Permit is subject to review at any time. Council allowed a 90-day trial period for valet parking. Police and Traffic Engineering have not witnessed any congestion with this system.</p> <p>Edmonston commented to representative Skaug that the valet parking sign has been placed in a parking space and should be kept on the sidewalk. Skaug will write letter to restaurant.</p> <p>Delino moved to approve continued valet operation. Traffic Engineer to write Council memo to allow valet service until such time as a public safety issue arises which would cause the Use Permit to be reviewed.</p>	PORTO-FINO
				<p>c. Review STOP at Vista del Oro/Mar Vista.</p> <p>Council requested this intersection be reviewed after six months. Traffic Engineering conducted a speed study that indicated Vista del Oro between Mar Vista and Eastbluff had reduced speeds of a few miles per hour and Vista del Oro westerly of Mar Vista stayed the same speed. The Association is in favor of the STOP; many residents are opposed, based upon phone calls to Traffic Engineering.</p>	VISTA DEL ORO/ MAR VISTA STOP

Attachment No. PC 10

Police Department Memorandum

**City of Newport Beach
Police Department**

Memorandum

December 19th, 2011

TO: Jaime Murillo, Associate Planner

FROM: Detective Mario Montero

SUBJECT: "Seafood Restaurant," 2304 W. Ocean Front
Use Permit No. UP2011-034 (PA2011-199).

At your request, the Police Department has reviewed the project application for "*Seafood Restaurant*" (final name to be determined), located at 2304 W. Ocean Front, Newport Beach. The applicant is requesting changes to the existing Use Permit (UP #3200) to change seating layout, add a new bar and expand hours of operation. The current hours of operation are 11:00 a.m. to 12:00 midnight daily. The new permit would allow the business to operate 9:00 a.m. to 12:00 midnight on weekends and maintain the current 11:00 a.m. to 12:00 midnight operations during the weekdays. The net public area of the business will actually be reduced from 580 square feet to 560 square feet as a result of the seating change.

I have included a report by Crime Analyst Paul Salenko that provides detailed statistical information related to calls for service in and around the applicant's place of business. This report indicates that this location is within an area where the number of reported crimes is 469.92% *higher* than the average of all reporting districts in the City. Additionally, this location is also within an RD that is over the Orange County per capita of ABC licenses.

Applicant History

The proposed restaurant location is a vacant portion of the property located at 2304 W. Ocean Front, Census Tract 0635.00, known as the Newport Beachwalk Hotel. Previous operators of the property include Renato Ristorante and The Newport Beach Hotel. The proposed restaurant will be a seafood themed eating establishment with a full oyster bar, high quality seafood, USDA Prime steaks and will offer wide variety food menu. The restaurant operator, Loomis Foods, will lease the property from the Newport Beachwalk Hotel. The restaurant will offer room service and box lunches to hotel guests in addition to serving the public as a separate and independent eating establishment.

Loomis Foods is operated by Steven Loomis, who operated other reputable dining establishments including the former “Oysters” restaurant in Corona Del Mar and the former “Red Onion” in Newport Beach.

Recommendations

The Police Department has no objection to the operation as described by the applicant.

Signs and Displays

Any signs or displays would need to conform to City requirements. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

Hours of Operation

The proposed hours of operation are from 11:00 a.m. to 12:00 p.m., weekdays and 9:00 a.m. to 12:00 p.m. on weekends.

Security

The Police Department has no recommendations.

Employee Training

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.

Additional Comments

Under Chapter 5.25 of the Newport Beach Municipal Code the new operator will need to apply for an Operator’s License through the Newport Beach Police Department in addition to any applicable State of California Department of Alcoholic Beverage Control licensing requirements.

Other Recommended Conditions

To maintain quality of life for area residents and ensure the location remains a Bona-fide eating establishment, the Police Department has determined that the following conditions would be appropriate for the Conditional Use Permit for the business:

1. Food service from the regular menu must be available to patrons up to thirty (30) minutes before the scheduled closing time.
2. No “happy hour” type of reduced price alcoholic beverage promotion shall be allowed except when offered in conjunction with food ordered

from the full service menu. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.

3. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
4. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
5. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.
6. There shall be no live entertainment allowed on the premises.
7. There shall be no dancing allowed on the premises.
8. Strict adherence to maximum occupancy limits is required.
9. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.

If you have any questions, please contact Detective Mario Montero at (949) 644-3706.



Mario Montero, ABC/Vice/Intelligence
Detective Division



Dennis Birch, Lieutenant
Detective Division Commander

City of Newport Beach

Police Department

Memorandum

December 12, 2011

TO: Jaime Murillo, Associate Planner

FROM: Paul Salenko, Crime Analyst

SUBJECT: Alcohol Related Statistics

At your request, our office has reviewed police services data for the **Seafood Restaurant** at **2304 West Oceanfront**. This area encompasses our reporting district (RD) number **15** as well as part of Census Tract 635. This report reflects **City of Newport Beach** crime data for calendar year 2010, which is the most current data available.

Calls for Service Information

City wide there were approximately 65,807 calls for police services during this time, of which 6,285 were in **RD15**. A "call for service" is, *any contact of the police department by a citizen which results in the dispatching of a unit or causes the contacted employee to take some sort of action*, such as criminal investigations, alarm responses, traffic accidents, parking problems, and animal control calls, etc.

Crime Information

There were 5,845 crimes reported to the Newport Beach Police Department during this period. Of this total, 2,756 were Part One Crimes***. Part One crimes are the eight most serious crimes (*Homicide, forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny-theft, Auto Theft and Arson*) as defined by the FBI in the Uniform Crime Reports. The remaining 3,089 were Part Two crimes. The Part One crime rate for the entire city during this same period was 3,191.81 per 100,000 people. The national Part One crime rate was 3,667.02* per 100,000 people.

Crimes	RD 15	Newport Beach	California*	National*
Part 1	319	2,884	1,184,073	10,639,369
Part 2	179	3,350	N/A	N/A
Part 1 Crime Rate	10,701.32	3,297.31	3,203.52	3,465.52

The number of active ABC licenses in this RD is 75**
Per capita ratio 1 license for every 40 residents.

This reporting district had a total of 859 reported crimes as compared to a City wide reporting district average of 152 reported crimes. This reporting district is 707 crimes more or 469.92 % above the City wide reporting district average. This location is within an RD that is over the Orange County per capita average of ABC licenses**.

Arrest Information

There were 99 DUI arrests and 262 Plain Drunk arrest in this area during this same period as compared to 1,272 for the entire city. This RD amounts to 28.38% of the DUI/Drunk arrests made in the entire City. According to a recent national study by the Department of Justice, more than 36% of adult offenders convicted of crimes in 1996 had been drinking at the time of their arrest.

Arrests (DUI/Drunk)	RD 15	Newport Beach	California*	National*
	361	1,272	324,442	2,094,731
Total Arrests	635	3,595	1,474,004	13,687,241

Additional Information

The Alcoholic Beverage Outlets ordinance states that the Planning Commission shall consider the crime rate in the adjacent reporting districts. The two adjacent reporting districts you requested are RD 13 and RD 16

Crimes	RD 13	RD 16
Part 1	70	158
Part 2	65	126
Crime Rate	3,632.89	5,679.95
Arrests (DUI/Drunk)	41	99
Total Arrests	127	232
Calls For Service	2,554	3,256
Number of active ABC licenses	5**	7**
Per capita ratio1 license for every	385* residents	397* residents.

Note: It is important to remember that when dealing with small numbers any change greatly affects any percentage changes.

The population figure used for the Crime Rate was 86,252.

*These numbers are from the 2009 Uniform Crime Reports, which is the most recent edition.

The **number of active ABC licenses is the total of all types of licenses known to the police department as of the date of this document. As of June 30, 2009 the Orange County average of active, retail ABC licenses was 1 license for every 542 residents. (5,589 licenses and a population of 3,026,786)

***This number includes simple assaults which are important when considering the overall nature of the RD.

If you are in need of any further assistance, please contact me at (949) 644-3791.

Paul Salenko
Crime Analysis Unit



Planning Commission January 19, 2012

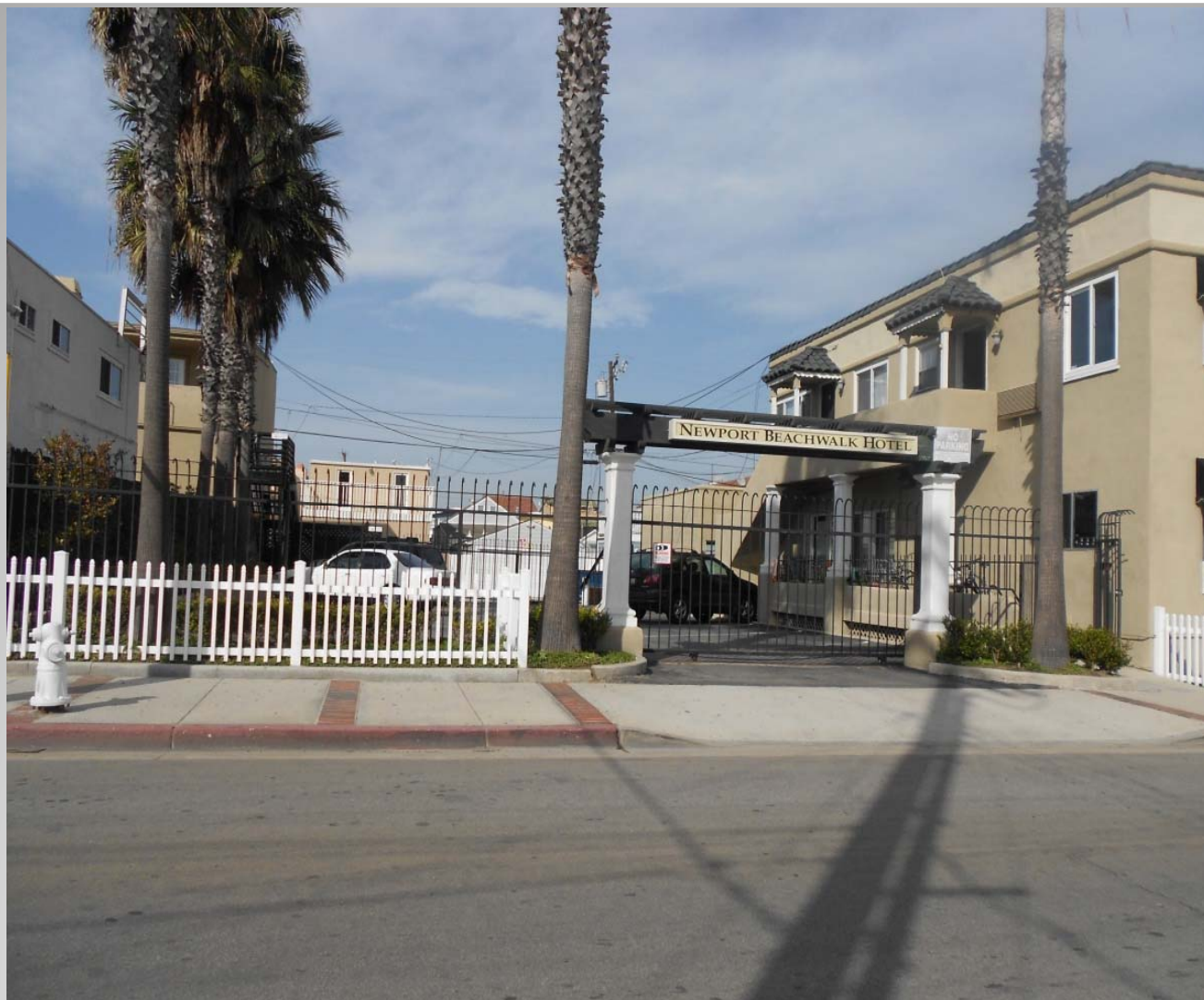
Flyn' Fish Oyster Bar & Grill
2304 W. Ocean Front
Conditional Use Permit No. UP2011-034
(PA2011-199)



Vicinity Map

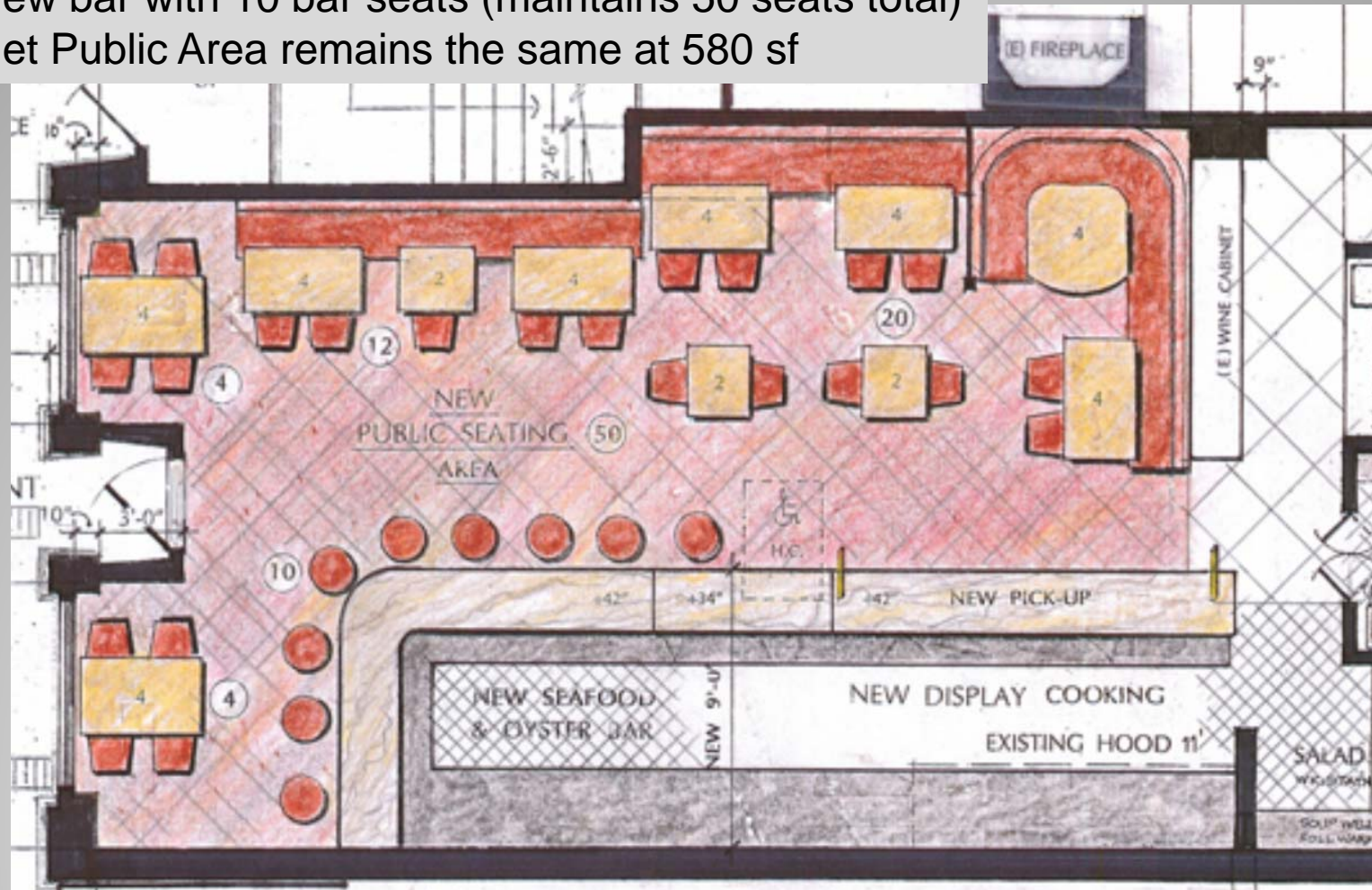


Site Photograph



Off-Site Parking Lot

- New bar with 10 bar seats (maintains 50 seats total)
- Net Public Area remains the same at 580 sf



Proposed Floor Plan

Existing Hours of Operation

- 11:00 a.m. to 12:00 midnight, daily

Proposed Hours of Operation

- 11:00 a.m. to 12:00 midnight, Monday through Friday
- 9:00 a.m. to 12:00 midnight, Saturdays and Sundays

Staff Recommended Hours of Operation

- 7:00 a.m. to 12:00 midnight, daily

Changes to Hours of Operation